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NOMINATION OF REX E. LEE TO BE ASSISTANT ATTOR-
NEY GENERAL IN CHARGE OF THE CIVIL DIVISION

HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

NOMINATION OF

REX E. LEE, OF UTAH, TO BE ASSISTANT ATTORNEY
GENERAL IN CHARGE OF THE CIVIL DIVISION

APRIL 30, 1975

Printed for the use of the Committee on the Judiciary



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NOMINATION OF REX E. LEE, TO BE ASSISTANT ATTORNEY GENERAL IN CHARGE OF THE CIVIL DIVISION

WEDNESDAY, APRIL 30, 1975

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:35 a.m., in room 2228, Dirksen Senate Office Building, Senator Roman L. Hruska presiding. Senator HRUSKA. The committee will come to order.

The Chairman. Senator Eastland, as we know, is President pro tem of the Senate. He had to be in the Senate this morning at 10:15 and he will be there for some time.

He has asked that in order to expedite the progress of this confirmation hearing that this Senator preside. I am always happy to do so if it helps the schedule of Senator Eastland.

This hearing is on the nomination of Rex E. Lee, of Utah, to be Assistant Attorney General in charge of the Civil Division vice Carla Hills resigned.

Notice of the hearing appeared in the Congressional Record on April 23, 1975.

Both Senators of his State have formally approved the nomination.

There are no objections which have been received to the nomination.

Both Senators are here to testify on behalf of the nominee.

The Chair is pleased to call on his distinguished colleague, the senior Senator from Utah, Senator Moss.

TESTIMONY OF FRANK E. MOSS, U.S. SENATOR FROM UTAH

Senator Moss. Thank you very much, Mr. Chairman.

I welcome this opportunity to appear and tell this committee that I endorse the nomination by the President of Rex E. Lee to be Assistant Attorney General.

I know of no one who is better suited to take on this job than Mr. Lee.

The committee has available a résumé of his experience and education. I need not detail that. I want simply to say that in the time that I have known him I have found him not only to be perceptive and a good, careful lawyer, a good thinker, but a man of great vision.

He is presently dean of the Brigham Young University Law School. This is a new law school. He has been putting together the faculty and making long-range plans.

I am sure that his career in government will be limited because I think in a matter of 2 or 3 or 4 years or so he will want to be back at the law school and see how it is working.

He has a rare combination of being a scholar and lawyer and at the same time an inspiring leader and teacher. I have no hesitation at all and I take great pride in recommending him to this committee.

I do hope that the proceeding can be expedited because I know that they need him to work.

Mrs. Hills has left now and we ought to have a good strong leader at that Civil Division in the Justice Department. Rex Lee will be such.

Thank you, Mr. Chairman.

Senator HRUSKA. Thank you, Senator Moss.

The junior Senator from Utah, Senator Jake Garn.

TESTIMONY OF JAKE GARN, U.S. SENATOR FROM UTAH

Senator GARN. Thank you, Mr. Chairman.

It is indeed my pleasure to be here and to second the good words of my senior colleague.

I will just very briefly enter on the record a summary of Mr. Lee's qualifications and background. He graduated from Brigham Young University. He received his juris doctorate at the University of Chicago Law School where he graduated first in his class and served as one of the editors of the Law Review. He served as a law clerk to Justice Byron R. White. From 1964 to 1972 he was with the firm of Jennings, Strouss & Salmon in Phoenix, Ariz.; and, as Senator Moss has mentioned, he is the first dean of the Brigham Young University Law School. He is married and has five children. The only reservation I have about his nomination is that it will be a loss to Brigham Young University and to the State of Utah to have him come here.

I do have one other reservation. As a member of the Banking Committee I have sat in on the hearings for Carla Hills to become Secretary of Housing and Urban Development and I will say that Rex will not be as pretty as Carla as Assistant Attorney General. [Laughter.]

Nevertheless, it is a great pleasure. I think he will be a great asset to the Justice Department, a credit to the law profession, and I am very pleased to endorse the President's nomination of him for this position.

Senator HRUSKA. Thank you very much for your presentation.

Mr. Lee, the Department has furnished the committee with a biographical résumé. Have you looked it over to see if there are any corrections or additions you would like to make?

TESTIMONY OF REX E. LEE, NOMINEE

Mr. LEE. I have examined it, Senator, and I believe that it is correct.

Senator HRUSKA. It will be made a part of the record of this hearing.

[The document referred to follows:]

BIOGRAPHICAL RÉSUMÉ OF REX E. LEE

Born: February 27, 1935, Los Angeles, Calif.

Legal residence: Utah.

Marital status: Married. Wife—Janet Griffin, 5 children.

Education: 1953-60, Brigham Young University, B.A. degree; 1960-63, University of Chicago Law School, J.D. degree cum laude.

Bar: 1963, Arizona; 1965, District of Columbia.

Experience: 1963-64, Law Clerk to Justice Byron R. White, U.S. Supreme Court; 1964-72, Jennings, Strouss & Salmon, Phoenix, Ariz.; 1971 to present, Dean and Professor, Brigham Young University Law School.

Office: Provo, Utah 85601; telephone: 801-374-1211 x4274.

Home: 2840 Iroquois Drive, Provo, Utah.

To be an Assistant Attorney General.

Senator HRUSKA. You practiced law, Mr. Lee, in Phoenix, Ariz., for 8 years. Would you tell the committee what the nature of your practice was and its general scope?

Mr. LEE. I would say that about 40 percent of my practice consisted of appellate work. I argued three cases in the U.S. Supreme Court, probably half a dozen cases in the Federal courts of appeal, and probably 2 dozen cases in State appellate courts. And I participated in the briefs on a number of other cases. The rest of my practice consisted of general commercial client representation, including document drafting, counseling, and commercial litigation. Substantively, I suppose that my principal speciality was antitrust during that time.

Senator HRUSKA. You had these cases in appellate work and general practice. What were typical situations in which those appeals were taken? What was the substance of these cases?

Mr. LEE. It varied greatly. There was one case that I argued in the U.S. Supreme Court involving the legality of a bond issue in the city of Phoenix. It was a case that was a follow-on to *Cipriano v. City of Houma* and raising the question of whether the constitutional limitations on voting rights and bond elections drew a distinction between general obligation bonds and revenue bonds. There was another one involving the constitutionality of Arizona's Fruit and Vegetable Stabilization Act. And the third case that I argued in the Supreme Court involved interpretation of Arizona's Enabling Act. The cases that I had in the courts of appeal just involved a great variety of matters.

Senator HRUSKA. That is what I wanted to get at, whether it was a specialized practice or whether it was general.

Mr. LEE. Specialized only in the sense that I was an appellate lawyer. But substantively it was not specialized.

Senator HRUSKA. You attended the University of Chicago Law School. I spent 1 academic year there under a different administration from yours. I take it that the present Attorney General was dean of the University of Chicago Law School when you attended there?

Mr. LEE. He was the dean for my first year and the first quarter of my second year.

Senator HRUSKA. And that did not seem to hurt you in being selected for this purpose?

[Laughter.]

Mr. LEE. I really do not know.

Senator HRUSKA. You have been engaged in starting a new law school and one of your character witnesses indicated that you are a man of vision. In our State we are dedicating this year two new law centers. Now one of the characteristics of each of them is they do not call them law schools anymore or law colleges. They call them a law center. The emphasis is upon continuing education in the profession, upon the participation in the activities of that law teaching institution by practitioners and the bar. Have you something comparable to that started in the Brigham Young University?

Mr. LEE. Started, yes, Senator. It has not reached the extent at this time that we hope that it eventually will, but we do feel that this is an important contribution the law school can make and must make. This is a new area, a new area of consciousness for both members of the bar and the law school, and we share the view that the law schools have a contribution to make in this new area.

Senator HRUSKA. It will take a while because it is a new thrust, it is a new program.

Mr. LEE. I agree with that.

Senator HRUSKA. And yet it is so necessary. It is found in other professions, in architecture, in the medical profession, in engineering—

Mr. LEE. We feel—

Senator HRUSKA [continuing]. Constantly updating the knowledge and the breadth and the width of the profession's interest.

Mr. LEE. I agree and I think that our profession lags behind somewhat in imparting training not only to people who are newly entering the profession, but updating the knowledge, the understanding of those of us who have been members of the profession for some time.

Senator HRUSKA. Well, thank you very much.

Have you any statement you would like to make?

Mr. LEE. No, Mr. Chairman.

Senator HRUSKA. Are there any members of your family here?

Mr. LEE. No.

Senator HRUSKA. I thought if there were, their names should be entered on the record.

Mr. LEE. Thank you, that is very courteous of you.

Senator HRUSKA. Wherever they are, we are happy for them because of your elevation to this very important post.

Mr. LEE. Thank you, Senator.

Senator HRUSKA. Is there anyone in the room who seeks to or would like to testify for or against this nominee?

[No response.]

Senator HRUSKA. If not, the hearing will recess subject to the call of the Chair.

The committee will undertake processing of your nomination, I hope at an early date, so the Senate can vote on it.

Thank you.

[Whereupon, at 10:45 a.m., the committee recessed subject to the call of the Chair.]

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